STATE OF MICHIGAN

COURT OF APPEALS

KATHLEEN MCCALLUM,

Plaintiff-Appellant,

v

THE CAPE CONDOMINIUM ASSOC., BETTER LIVING SERVICE and RICHARD CARRIER,

Defendants-Appellees,

and

MARK F. MAKOWER & ASSOC., P.C.,

Defendant.

UNPUBLISHED
January 24, 2006

No. 256894
Wayne Circuit Court
LC No. 03-329715-CH

Before: Murray, P.J. and Jansen and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants, the Cape Condominium Association (CCA), Better Living Service (BLS) and Richard Carrier (Carrier), summary disposition and denying plaintiff's motion for partial summary disposition. We affirm.

We review de novo a trial court's ruling on a motion for summary disposition. *Kefgen v Davidson,* 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim and should be granted if the evidence demonstrates that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Mac Donald v PKT, Inc,* 464 Mich 322, 332; 628 NW2d 33 (2001).

Plaintiff first contends that the trial court erred in granting summary disposition in CCA's favor on plaintiff's claim that it violated the condominium act, MCL 559.101, *et seq.* We disagree.

The record is clear that plaintiff consented to the lien placed on her unit for the cost of replacing the windows in her unit. Nonetheless, plaintiff contends that her consent does not render the lien valid when the assessment was illegal in the first place. In support of this argument, plaintiff simply asserts, without analysis or support, that the assessment was illegal because it was a special assessment, not an additional assessment, and a special assessment

cannot be used for replacements. Based on the record evidence, we agree with the trial court that plaintiff has not established a genuine issue of material fact as to whether the assessment was a special assessment that was invalid.

The condominium act provides that "[t]he administration of a condominium project shall be governed by bylaws recorded as part of the master deed, or as provided in the master deed." MCL 559.153. Regarding assessments, the act provides: "Except to the extent that the condominium documents provide otherwise, common expenses associated with the maintenance, repair, renovation, restoration, or replacement of a limited common element shall be specially assessed against the condominium unit to which that limited common element was assigned at the time the expenses were incurred." MCL 559.169(1).

Under the master deed, windows located in foundations and main walls are "general common elements," and the interior surfaces of windows are "limited common elements." Also, under the master deed, "costs of maintenance, repair, and replacement of all other Limited and General Common Elements shall be expenses of administration to be borne by all of the Co-owners." Under Article III, § 3(a) of the bylaws, the board may impose additional assessments if it determines, in its "sole discretion," "that the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Condominium, or in the event of emergencies . . . provided, however, that such additional assessment or assessments shall not exceed the original assessment by [25] percent without prior approval of at least [60] percent of all Co-owners in number." It is undisputed that over 60 percent of co-owners approved the additional assessment for the windows. Because the window assessment was authorized by the bylaws, there is no genuine issue of material fact as to whether the assessment was valid. Therefore, the trial court did not err in dismissing this claim.

Plaintiff next argues that the trial court erred in granting summary disposition on her slander of title claim against CCA when the lien based on the window assessment was invalid. As discussed above, the window assessment was valid. Under the condominium act, where a co-owner fails to pay assessments, such assessments "constitute a lien upon the unit" owned. MCL 559.208(1). Because plaintiff's unpaid assessment constitutes a lien upon her unit, CCA did not publish a false statement about plaintiff's property right when it placed the lien on her unit.

Plaintiff next argues that the trial court erred in granting summary disposition to defendant on her claim against BLS under the Fair Debt Collection Practices Act (FDCPA), 15 USC 1692e *et seq*. We disagree. Plaintiff's claim under the FDCPA is solely premised on her allegations that the window assessment was invalid. As discussed above, defendants' window assessment was valid. Therefore, plaintiff's claim under the FDCPA was properly dismissed.[1]

Plaintiff next argues that the trial court erred in granting summary disposition of her defamation claim against Carrier. We disagree. The elements of defamation are: "(1) a false and defamatory statement concerning the plaintiff; (2) an unprivileged publication to a third

[1] Although plaintiff also alleged a claim under the FDCPA for a $74.22 lien resulting from the installation of a handrail, plaintiff made no mention of this claim on appeal.

party; (3) fault amounting to at least negligence . . . and (4) either actionability . . . irrespective of special harm (defamation per se) or . . . special harm . . . (defamation per quod)." *Mino v Clio School Dist*, 255 Mich App 60, 72; 661 NW2d 586 (2003).

In her complaint, plaintiff alleged that Carrier stated at a closed session of the board "that, if the Plaintiff could not afford to pay for the windows, she should move to 'the other side of the tracks where the "white trash" lives.'" Plaintiff alleged that she was told by the board's vice-president that Carrier made this statement. On appeal, plaintiff argues that it was not necessary for her to have heard this statement. However, the issue is not whether plaintiff can maintain a defamation claim for a statement she did not hear, but rather, whether plaintiff has established a genuine issue of material fact as to whether the statement was even made. Because plaintiff cites no evidence whatsoever that the statement was made, summary disposition of this claim was appropriate.

Affirmed.

/s/ Christopher M. Murray
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly